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The Constitution: A Minority Document

The Economic Interests of Members of the Convention

A survey of the economic interests of the members of the Convention presents certain conclusions:

A majority of the members were lawyers by profession.

Most of the members came from towns, on or near the coast, that is, from the regions in which personalty was largely concentrated.

Not one member represented in his immediate personal economic interests the small farming or mechanic classes.

The overwhelming majority of members, at least five-sixths, were immediately, directly, and personally interested in the outcome of their labors at Philadelphia, and were to a greater or less extent economic beneficiaries from the adoption of the Constitution.

1. Public security interests were extensively represented in the Convention. Of the fifty-five members who attended no less than forty appear on the Records of the Treasury Department for sums varying from a few dollars up to more than one hundred thousand dollars. . . .

It is interesting to note that, with the exception of New York, and possibly Delaware, each state had one or more prominent representatives in the Convention who held more than a negligible amount of securities, and who could therefore speak with feeling and authority on the question of providing in the new Constitution for the full discharge of the public debt. . . .

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2. Personalty invested in lands for speculation was represented by at least fourteen members. . . .

3. Personalty in the form of money loaned at interest was represented by at least twenty-four members. . . .

4. Personalty in mercantile, manufacturing, and shipping lines was represented by at least eleven members. . . .

5. Personalty in slaves was represented by at least fifteen members. . . .

It cannot be said, therefore, that the members of the Convention were "disinterested." On the contrary, we are forced to accept the profoundly significant conclusion that they knew through their personal experiences in economic affairs the precise results which the new government that they were setting up was designed to attain. As a group of doctrinaires, like the Frankfort assembly of 1848, they would have failed miserably; but as practical men they were able to build the new government upon the only foundations which could be stable: fundamental economic interests.¹

The Constitution as an Economic Document

It is difficult for the superficial student of the Constitution, who has read only the commentaries of the legists, to conceive of that instrument as an economic document. It places no property qualifications on voters or officers; it gives no outward recognition of any economic groups in society; it mentions no special privileges to be conferred upon any class. It betrays no feeling, such as vibrates through the French constitution of 1791; its language is cold, formal, and severe.

The true inwardness of the Constitution is not revealed by an examination of its provisions as simple propositions of law; but by a long and careful study of the voluminous correspondence of the period, contemporary newspapers and pamphlets, the records of the debates in the Convention at Philadelphia and in the several state conventions, and particularly, *The Federalist*, which was widely circulated during the struggle over ratification. The correspondence shows the exact character of the evils which the Constitution was intended to remedy; the records of the proceedings in the Philadelphia Convention reveal the successive steps in the building of the framework of the government under the pressure of economic interests; the pamphlets and newspapers disclose the ideas of the contestants over the ratification; and *The Federalist* presents the political science of the new system as conceived by three of the profoundest thinkers of the period, Hamilton, Madison, and Jay.

Doubtless, the most illuminating of these sources on the economic

¹ The fact that a few members of the Convention, who had considerable economic interests at stake, refused to support the Constitution does not invalidate the general conclusions here presented. In the cases of Yates, Lansing, Luther Martin, and Mason, definite economic reasons for their action are forthcoming; but this is a minor detail.

character of the Constitution are the records of the debates in the Convention, which have come down to us in fragmentary form; and a thorough treatment of material forces reflected in the several clauses of the instrument of government created by the grave assembly at Philadelphia would require a rewriting of the history of the proceedings in the light of the great interests represented there. But an entire volume would scarcely suffice to present the results of such a survey, and an undertaking of this character is accordingly impossible here.

The Federalist, on the other hand, presents in a relatively brief and systematic form an economic interpretation of the Constitution by the men best fitted, through an intimate knowledge of the ideals of the framers, to expound the political science of the new government. This wonderful piece of argumentation by Hamilton, Madison, and Jay is in fact the finest study in the economic interpretation of politics which exists in any language; and whoever would understand the Constitution as an economic document need hardly go beyond it. It is true that the tone of the writers is somewhat modified on account of the fact that they are appealing to the voters to ratify the Constitution, but at the same time they are, by the force of circumstances, compelled to convince large economic groups that safety and strength lie in the adoption of the new system.

Indeed, every fundamental appeal in it is to some material and substantial interest. Sometimes it is to the people at large in the name of protection against invading armies and European coalitions. Sometimes it is to the commercial classes whose business is represented as prostrate before the follies of the Confederation. Now it is to creditors seeking relief against paper money and the assaults of the agrarians in general; now it is to the holders of federal securities which are depreciating toward the vanishing point. But above all, it is to the owners of personalty anxious to find a foil against the attacks of levelling democracy, that the authors of *The Federalist* address their most cogent arguments in favor of ratification. It is true there is much discussion of the details of the new frame-work of government, to which even some friends of reform took exceptions; but Madison and Hamilton both knew that these were incidental matters when compared with the sound basis upon which the superstructure rested.

In reading the pages of this remarkable work as a study in political economy, it is important to bear in mind that the system, which the authors are describing, consisted of two fundamental parts—one positive, the other negative:

I. A government endowed with certain positive powers, but so constructed as to break the force of majority rule and prevent invasions of the property rights of minorities.

II. Restrictions on the state legislatures which had been so vigorous in their attacks on capital.

Under some circumstances, action is the immediate interest of the dom-

inant party; and whenever it desires to make an economic gain through governmental functioning, it must have, of course, a system endowed with the requisite powers.

Examples of this are to be found in protective tariffs, in ship subsidies, in railway land grants, in river and harbor improvements, and so on through the catalogue of so-called "paternalistic" legislation. Of course it may be shown that the "general good" is the ostensible object of any particular act; but the general good is a passive force, and unless we know who are the several individuals that benefit in its name, it has no meaning. When it is so analyzed, immediate and remote beneficiaries are discovered; and the former are usually found to have been the dynamic element in securing the legislation. Take for example, the economic interests of the advocates who appear in tariff hearings at Washington.

On the obverse side, dominant interests quite as often benefit from the prevention of governmental action as from positive assistance. They are able to take care of themselves if let alone within the circle of protection created by the law. Indeed, most owners of property have as much to fear from positive governmental action as from their inability to secure advantageous legislation. Particularly is this true where the field of private property is already extended to cover practically every form of tangible and intangible wealth. This was clearly set forth by Hamilton:

It may perhaps be said that the power of preventing bad laws includes that of preventing good ones. . . . But this objection will have little weight with those who can properly estimate the mischiefs of that inconstancy and mutability in the laws which form the greatest blemish in the character and genius of our governments. They will consider every institution calculated to restrain the excess of law-making, and to keep things in the same state in which they happen to be at any given period, as more likely to do good than harm. . . . The injury which may possibly be done by defeating a few good laws will be amply compensated by the advantage of preventing a number of bad ones.

The Underlying Political Science of the Constitution

Before taking up the economic implications of the structure of the federal government, it is important to ascertain what, in the opinion of *The Federalist*, is the basis of all government. The most philosophical examination of the foundations of political science is made by Madison in the tenth number. Here he lays down, in no uncertain language, the principle that the first and elemental concern of every government is economic.

1. "The first object of government," he declares, is the protection of "the diversity in the faculties of men, from which the rights of property originate." The chief business of government, from which, perforce, its essential nature must be derived, consists in the control and adjustment of conflicting economic interests. After enumerating the various forms of property

interests which spring up inevitably in modern society, he adds: "The regulation of these various and interfering interests forms the principal task of modern legislation, and involves the spirit of party and faction in the ordinary operations of the government."

2. What are the chief causes of these conflicting political forces with which the government must concern itself? Madison answers. Of course fanciful and frivolous distinctions have sometimes been the cause of violent conflicts;

but the most common and durable source of factions has been the various and unequal distribution of property. Those who hold and those who are without property have ever formed distinct interests in society. Those who are creditors, and those who are debtors, fall under a like discrimination. A landed interest, a manufacturing interest, a mercantile interest, a moneyed interest, with many lesser interests grow up of necessity in civilized nations, and divide them into different classes actuated by different sentiments and views.

3. The theories of government which men entertain are emotional reactions to their property interests. "From the protection of different and unequal faculties of acquiring property, the possession of different degrees and kinds of property immediately results; and from the influence of these on the sentiments and views of the respective proprietors, ensues a division of society into different interests and parties." Legislatures reflect these interests. "What," he asks, "are the different classes of legislators but advocates and parties to the causes which they determine." There is no help for it. "The causes of faction cannot be removed," and "we well know that neither moral nor religious motives can be relied on as an adequate control."

4. Unequal distribution of property is inevitable, and from it contending factions will rise in the state. The government will reflect them, for they will have their separate principles and "sentiments"; but the supreme danger will arise from the fusion of certain interests into an overbearing majority, which Madison, in another place, prophesied would be the landless proletariat,—an overbearing majority which will make its "rights" paramount, and sacrifice the "rights" of the minority. "To secure the public good," he declares, "and private rights against the danger of such a faction and at the same time preserve the spirit and the form of popular government is then the great object to which our inquiries are directed."

5. How is this to be done? Since the contending classes cannot be eliminated and their interests are bound to be reflected in politics, the only way out lies in making it difficult for enough contending interests to fuse into a majority, and in balancing one over against another. The machinery for doing this is created by the new Constitution and by the Union. (a) Public views are to be refined and enlarged "by passing them through the medium of a chosen body of citizens." (b) The very size of the Union will

enable the inclusion of more interests so that the danger of an overbearing majority is not so great.

The smaller the society, the fewer probably will be the distinct parties and interests composing it; the fewer the distinct parties and interests, the more frequently will a majority be found of the same party. . . . Extend the sphere, and you take in a greater variety of parties and interests; you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens; or if such a common motive exists, it will be more difficult for all who feel it to discover their strength and to act in unison with each other.

Q. E. D., "in the extent and proper structure of the Union, therefore, we behold a republican remedy for the diseases most incident to republican government."

The Structure of Government or the Balance of Powers

The fundamental theory of political economy thus stated by Madison was the basis of the original American conception of the balance of powers which is formulated at length in four numbers of *The Federalist* and consists of the following elements:

1. No mere parchment separation of departments of government will be effective. "The legislative department is everywhere extending the sphere of its activity, and drawing all power into its impetuous vortex. The founders of our republic . . . seem never for a moment to have turned their eyes from the danger to liberty from the overgrown and all-grasping prerogative of an hereditary magistrate, supported and fortified by an hereditary branch of the legislative authority. They seem never to have recollected the danger from legislative usurpations, which, by assembling all power in the same hands, must lead to the same tyranny as is threatened by executive usurpations."

2. Some sure mode of checking usurpations in the government must be provided, other than frequent appeals to the people. "There appear to be insuperable objections against the proposed recurrence to the people as a provision in all cases for keeping the several departments of power within their constitutional limits." In a contest between the legislature and the other branches of the government, the former would doubtless be victorious on account of the ability of the legislators to plead their cause with the people.

3. What then can be depended upon to keep the government in close rein?

The only answer that can be given is, that as all these exterior provisions are found to be inadequate, the defect must be supplied by so contriving the interior structure of the government as that its several constituent parts may, by their mutual relations, be the means of keeping each other in their proper places. . . . It

is of great importance in a republic not only to guard the society against the oppression of its rulers, but to guard one part of the society against the injustice of the other part. Different interests necessarily exist in different classes of citizens. If a majority be united by a common interest, the rights of the minority will be insecure.

There are two ways of obviating this danger: one is by establishing a monarch independent of popular will, and the other is by reflecting these contending interests (so far as their representatives may be enfranchised) in the very structure of the government itself so that a majority cannot dominate the minority—which minority is of course composed of those who possess property that may be attacked. "Society itself will be broken into so many parts, interests, and classes of citizens, that the rights of individuals, or of the minority, will be in little danger from interested combinations of the majority."

4. The structure of the government as devised at Philadelphia reflects these several interests and makes improbable any danger to the minority from the majority. "The House of Representatives being to be elected immediately by the people, the Senate by the State legislatures, the President by electors chosen for that purpose by the people, there would be little probability of a common interest to cement these different branches in a predilection for any particular class of electors."

5. All of these diverse interests appear in the amending process but they are further reinforced against majorities. An amendment must receive a two-thirds vote in each of the two houses so constituted and the approval of three-fourths of the states.

6. The economic corollary of this system is as follows: Property interests may, through their superior weight in power and intelligence, secure advantageous legislation whenever necessary, and they may at the same time obtain immunity from control by parliamentary majorities.

If we examine carefully the delicate instrument by which the framers sought to check certain kinds of positive action that might be advocated to the detriment of established and acquired rights, we cannot help marvelling at their skill. Their leading idea was to break up the attacking forces at the starting point: the source of political authority for the several branches of the government. This disintegration of positive action at the source was further facilitated by the differentiation in the terms given to the respective departments of the government. And the crowning counterweight to "an interested and over-bearing majority," as Madison phrased it, was secured in the peculiar position assigned to the judiciary, and the use of the sanctity and mystery of the law as a foil to democratic attacks.

It will be seen on examination that no two of the leading branches of the government are derived from the same source. The House of Representatives springs from the mass of the people whom the states may see fit to enfranchise. The Senate is elected by the legislatures of the states, which

were, in 1787, almost uniformly based on property qualifications, sometimes with a differentiation between the sources of the upper and lower houses. The President is to be chosen by electors selected as the legislatures of the states may determine—at all events by an authority one degree removed from the voters at large. The judiciary is to be chosen by the President and the Senate, both removed from direct popular control and holding for longer terms than the House.

A sharp differentiation is made in the terms of the several authorities, so that a complete renewal of the government at one stroke is impossible. The House of Representatives is chosen for two years; the Senators for six, but not at one election, for one-third go out every two years. The President is chosen for four years. The judges of the Supreme Court hold for life. Thus “popular distempers,” as eighteenth-century publicists called them, are not only restrained from working their havoc through direct elections, but they are further checked by the requirement that they must last six years in order to make their effects felt in the political department of the government, providing they can break through the barriers imposed by the indirect election of the Senate and the President. Finally, there is the check of judicial control that can be overcome only through the manipulation of the appointing power which requires time, or through the operation of a cumbersome amending system.

The keystone of the whole structure is, in fact, the system provided for judicial control—the most unique contribution to the science of government which has been made by American political genius. It is claimed by some recent writers that it was not the intention of the framers of the Constitution to confer upon the Supreme Court the power of passing upon the constitutionality of statutes enacted by Congress; but in view of the evidence on the other side, it is incumbent upon those who make this assertion to bring forward positive evidence to the effect that judicial control was not a part of the Philadelphia programme. Certainly, the authors of *The Federalist* entertained no doubts on the point, and they conceived it to be such an excellent principle that they were careful to explain it to the electors to whom they addressed their arguments.

After elaborating fully the principle of judicial control over legislation under the Constitution, Hamilton enumerates the advantages to be derived from it. Speaking on the point of tenure during good behavior, he says:

In a monarchy it is an excellent barrier to the despotism of the prince; in a republic it is no less an excellent barrier to the encroachments and oppressions of the representative body. . . . If, then, the courts of justice are to be considered as the bulwarks of a limited Constitution against legislative encroachments, this consideration will afford a strong argument for the permanent tenure of judicial offices, since nothing will contribute so much as this to that independent spirit in the judges which must be essential to the faithful performance of so arduous a duty. . . .

But it is not with a view to infractions of the Constitution only that the independence of the judges may be an essential safeguard against the effects of occasional ill humors in the society. These sometimes extend no farther than to the injury of private rights of particular classes of citizens, by unjust and partial laws. Here also the firmness of the judicial magistracy is of vast importance in mitigating the severity and confining the operation of such laws. It not only serves to moderate the immediate mischiefs of those which may have been passed, but it operates as a check upon the legislative body in passing them; who, perceiving that obstacles to the success of iniquitous intention are to be expected from the scruples of the courts, are in a manner compelled, by the very motives of injustice they meditate, to qualify their attempts. This is a circumstance calculated to have more influence upon the character of our governments than but few may be aware of.

Nevertheless, it may be asked why, if the protection of property rights lay at the basis of the new system, there is in the Constitution no provision for property qualifications for voters or for elected officials and representatives. This is, indeed, peculiar when it is recalled that the constitutional history of England is in a large part a record of conflict over the weight in the government to be enjoyed by definite economic groups, and over the removal of the property qualifications early imposed on members of the House of Commons and on the voters at large. But the explanation of the absence of property qualifications from the Constitution is not difficult.

The members of the Convention were, in general, not opposed to property qualifications as such, either for officers or voters. "Several propositions," says Mr. S. H. Miller,

were made in the federal Convention in regard to property qualifications. A motion was carried instructing the committee to fix upon such qualifications for members of Congress. The committee could not agree upon the amount and reported in favor of leaving the matter to the legislature. Charles Pinckney objected to this plan as giving too much power to the first legislature. . . . Ellsworth objected to a property qualification on account of the difficulty of fixing the amount. If it was made high enough for the South, it would not be applicable to the Eastern States. Franklin was the only speaker who opposed the proposition to require property on principle, saying that "some of the greatest rogues he was ever acquainted with were the richest rogues." A resolution was also carried to require a property qualification for the Presidency. Hence it was evident that the lack of all property requirements for office in the United States Constitution was not owing to any opposition of the convention to such qualifications per se.

Propositions to establish property restrictions were defeated, not because they were believed to be inherently opposed to the genius of American government, but for economic reasons—strange as it may seem. These economic reasons were clearly set forth by Madison in the debate over landed qualifications for legislators in July, when he showed, first, that slight property qualifications would not keep out the small farmers whose paper money

schemes had been so disastrous to personalty; and, secondly, that landed property qualifications would exclude from Congress the representatives of "those classes of citizens who were not landholders," i.e., the personalty interests. This was true, he thought, because the mercantile and manufacturing classes would hardly be willing to turn their personalty into sufficient quantities of landed property to make them eligible for a seat in Congress.

The other members also knew that they had most to fear from the very electors who would be enfranchised under a slight freehold restriction, for the paper money party was everywhere bottomed on the small farming class. As Gorham remarked, the elections at Philadelphia, New York, and Boston, "where the merchants and mechanics vote, are at least as good as those made by freeholders only." The fact emerges, therefore, that the personalty interests reflected in the Convention could, in truth, see no safeguard at all in a freehold qualification against the assaults on vested personalty rights which had been made by the agrarians in every state. And it was obviously impossible to establish a personalty test, had they so desired, for there would have been no chance of securing a ratification of the Constitution at the hands of legislatures chosen by freeholders, or at the hands of conventions selected by them.

A very neat example of this antagonism between realty and personalty in the Convention came out on July 26, when Mason made, and Charles Pinckney supported, a motion imposing landed qualifications on members of Congress and excluding from that body "persons having unsettled accounts with or being indebted to the United States." In bringing up this motion Mason "observed that persons of the latter descriptions had frequently got into the state legislatures in order to promote laws that might shelter their delinquencies; and that this evil had crept into Congress if report was to be regarded."

Gouverneur Morris was on his feet in an instant. If qualifications were to be imposed, they should be laid on electors, not elected persons. The disqualification would fall upon creditors of the United States, for there were but few who owed the government anything. He knew that under this rule very few members of the Convention could get into the new government which they were establishing.

As to persons having unsettled accounts, he believed them to be pretty many. He thought, however, that such a discrimination would be both odious and useless and in many instances unjust and cruel. The delay of settlement had been more the fault of the public than of individuals. What will be done with those patriotic Citizens who have lent money or services or property to their country, without having been yet able to obtain a liquidation of their claims? Are they to be excluded?

On thinking it over, Morris added to his remarks on the subject, saying, "It was a precept of great antiquity as well as of high authority that we should

not be righteous overmuch. He thought we ought to be equally on our guard against being wise overmuch. . . . The parliamentary qualifications quoted by Colonel Mason had been disregarded in practice; and was but a scheme of the landed against the monied interest."

Gerry thought that the inconvenience of excluding some worthy creditors and debtors was of less importance than the advantages offered by the resolution, but, after some reflection, he added that "if property be one object of government, provisions for securing it cannot be improper." King sagely remarked that there might be a great danger in imposing a landed qualification, because "it would exclude the monied interest, whose aids may be essential in particular emergencies to the public safety."

Madison had no confidence in the effectiveness of the landed qualification and moved to strike it out, adding,

Landed possessions were no certain evidence of real wealth. Many enjoyed them to a great extent who were more in debt than they were worth. The unjust laws of the states had proceeded more from this class of men than any others. It had often happened that men who had acquired landed property on credit got into the Legislatures with a view of promoting an unjust protection against their Creditors. In the next place, if a small quantity of land should be made the standard, it would be no security; if a large one, it would exclude the proper representatives of those classes of Citizens who were not landholders.

For these and other reasons he opposed the landed qualifications and suggested that property qualifications on the voters would be better.

The motion to strike out the "landed" qualification for legislators was carried by a vote of ten to one; the proposition to strike out the disqualification of persons having unsettled accounts with the United States was carried by a vote of nine to two. Finally the proposition to exclude persons who were indebted to the United States was likewise defeated by a vote of nine to two, after Pinckney had called attention to the fact that "it would exclude persons who had purchased confiscated property or should purchase Western territory of the public and might be some obstacle to the sale of the latter."

Indeed, there was little risk to personalty in thus allowing the Constitution to go to the states for approval without any property qualifications on voters other than those which the state might see fit to impose. Only one branch of new government, the House of Representatives, was required to be elected by popular vote; and, in case popular choice of presidential electors might be established, a safeguard was secured by the indirect process. Two controlling bodies, the Senate and Supreme Court, were removed altogether from the possibility of popular election except by constitutional amendment. Finally, the conservative members of the Convention were doubly fortified in the fact that nearly all of the state constitutions then in

force provided real or personal property qualifications for voters anyway, and radical democratic changes did not seem perilously near.

The Powers Conferred upon the Federal Government

1. The powers for positive action conferred upon the new government were few, but they were adequate to the purposes of the framers. They included, first, the power to lay and collect taxes; but here the rural interests were conciliated by the provision that direct taxes must be apportioned among the states according to population, counting three-fifths of the slaves. This, in the opinion of contemporaries eminently qualified to speak, was designed to prevent the populations of the manufacturing states from shifting the burdens of taxation to the sparsely settled agricultural regions.

In a letter to the governor of their state, three delegates from North Carolina, Blount, Spaight, and Williamson, explained the advantage of this safeguard on taxation to the southern planters and farmers:

We had many things to hope from a National Government and the chief thing we had to fear from such a Government was the risque of unequal or heavy Taxation, but we hope you will believe as we do that the Southern states in general and North Carolina in particular are well secured on that head by the proposed system. It is provided in the 9th section of article the first that no Capitation or direct Tax shall be laid except in proportion to the number of inhabitants, in which number five blacks are only counted as three. If a land tax is laid, we are to pay the same rate; for example, fifty citizens of North Carolina can be taxed no more for all their Lands than fifty Citizens in one of the Eastern States. This must be greatly in our favour, for as most of their farms are small and many of them live in Towns we certainly have, one with another, land of twice the value that they possess. When it is also considered that five Negroes are only to be charged the same Poll Tax as three whites, the advantage must be considerably increased under the proposed Form of Government. The Southern states have also a better security for the return of slaves who might endeavour to escape than they had under the original Confederation.

The taxing power was the basis of all other positive powers, and it afforded the revenues that were to discharge the public debt in full. Provision was made for this discharge in Article VI to the effect that "All debts contracted and engagements entered into before the adoption of this Constitution shall be valid against the United States under this Constitution as under the Confederation."

But the cautious student of public economy, remembering the difficulties which Congress encountered under the Articles of Confederation in its attempts to raise the money to meet the interest on the debt, may ask how the framers of the Constitution could expect to overcome the hostile economic forces which had hitherto blocked the payment of the requisitions. The answer is short. Under the Articles, Congress had no power to lay and

collect taxes immediately; it could only make requisitions on the state legislatures. Inasmuch as most of the states relied largely on direct taxes for their revenues, the demands of Congress were keenly felt and stoutly resisted. Under the new system, however, Congress is authorized to lay taxes on its own account, but it is evident that the framers contemplated placing practically all of the national burden on the consumer. The provision requiring the apportionment of direct taxes on a basis of population obviously implied that such taxes were to be viewed as a last resort when indirect taxes failed to provide the required revenue.

With his usual acumen, Hamilton conciliates the freeholders and property owners in general by pointing out that they will not be called upon to support the national government by payments proportioned to their wealth. Experience has demonstrated that it is impracticable to raise any considerable sums by direct taxation. Even where the government is strong, as in Great Britain, resort must be had chiefly to indirect taxation. The pockets of the farmers "will reluctantly yield but scanty supplies, in the unwelcome shape of impositions on their houses and lands; and personal property is too precarious and invisible a fund to be laid hold of in any other way than by the imperceptible agency of taxes on consumption." Real and personal property are thus assured a generous immunity from such burdens as Congress had attempted to impose under the Articles; taxes under the new system will, therefore, be less troublesome than under the old.

2. Congress was given, in the second place, plenary power to raise and support military and naval forces, for the defence of the country against foreign and domestic foes. These forces were to be at the disposal of the President in the execution of national laws; and to guard the states against renewed attempts of "desperate debtors" like Shays, the United States guaranteed to every commonwealth a republican form of government and promised to aid in quelling internal disorder on call of the proper authorities.

The army and navy are considered by the authors of *The Federalist* as genuine economic instrumentalities. . . . They regarded trade and commerce as the fundamental cause of wars between nations; and the source of domestic insurrection they traced to class conflicts within society. "Nations in general," says Jay, "will make war whenever they have a prospect of getting anything by it," and it is obvious that the United States dissevered and discordant will be the easy prey to the commercial ambitions of their neighbors and rivals.

The material gains to be made by other nations at the expense of the United States are so apparent that the former cannot restrain themselves from aggression. France and Great Britain feel the pressure of our rivalry in the fisheries; they and other European nations are our competitors in navigation and the carrying trade; our independent voyages to China interfere with the monopolies enjoyed by other countries there; Spain would like to shut the Mississippi against us on one side and Great Britain vain would

close the St. Lawrence on the other. The cheapness and excellence of our productions will excite their jealousy, and the enterprise and address of our merchants will not be consistent with the wishes or policy of the sovereigns of Europe. But, adds the commentator, by way of clinching the argument, "if they see that our national government is efficient and well administered, our trade prudently regulated, our militia properly organized and disciplined, our resources and finances discreetly managed, our credit re-established, our people free, contented, and united, they will be much more disposed to cultivate our friendship than provoke our resentment."

All the powers of Europe could not prevail against us. "Under a vigorous national government the natural strength and resources of the country, directed to a common interest, would baffle all the combinations of European jealousy to restrain our growth. . . . An active commerce, an extensive navigation, and a flourishing marine would then be the offspring of moral and physical necessity. We might defy the little arts of the little politicians to control or vary the irresistible and unchangeable course of nature." In the present state of disunion the profits of trade are snatched from us; our commerce languishes; and poverty threatens to overspread a country which might outrival the world in riches.

The army and navy are to be not only instruments of defence in protecting the United States against the commercial and territorial ambitions of other countries; but they may be used also in forcing open foreign markets. What discriminatory tariffs and navigation laws may not accomplish the sword may achieve. The authors of *The Federalist* do not contemplate that policy of mild and innocuous isolation which was later made famous by Washington's farewell address. On the contrary—they do not expect the United States to change human nature and make our commercial classes less ambitious than those of other countries to extend their spheres of trade. A strong navy will command the respect of European states.

There can be no doubt that the continuance of the Union under an efficient government would put it within our power, at a period not very distant, to create a navy which, if it could not vie with those of the great maritime powers, would at least be of respectable weight if thrown into the scale of either of two contending parties. . . . A few ships of the line sent opportunely to the reinforcement of either side, would often be sufficient to decide the fate of a campaign, on the event of which interests of the greatest magnitude were suspended. Our position is, in this respect, a most commanding one. And if to this consideration we add that of the usefulness of supplies from this country, in the prosecution of military operations in the West Indies, it will be readily perceived that a situation so favorable would enable us to bargain with great advantage for commercial privileges. A price would be set not only upon our friendship, but upon our neutrality. By a steady adherence to the Union, we may hope, ere long, to become the arbiter of Europe in America, and to be able to incline the balance of European competitions in this part of the world as our interest may dictate.

As to dangers from class wars within particular states, the authors of *The Federalist* did not deem it necessary to make extended remarks: the recent events in New England were only too vividly impressed upon the public mind. "The tempestuous situation from which Massachusetts has scarcely emerged," says Hamilton, "evinces that dangers of this kind are not merely speculative. Who can determine what might have been the issue of her late convulsions, if the malcontents had been headed by a Caesar or by a Cromwell." The strong arm of the Union must be available in such crises.

In considering the importance of defence against domestic insurrection, the authors of *The Federalist* do not overlook an appeal to the slave-holders' instinctive fear of a servile revolt. Naturally, it is Madison whose interest catches this point and drives it home, by appearing to discount it. In dealing with the dangers of insurrection, he says: "I take no notice of an unhappy species of population abounding in some of the states who, during the calm of regular government are sunk below the level of men; but who, in the tempestuous scenes of civil violence, may emerge into human character and give a superiority of strength to any party with which they may associate themselves."

3. In addition to the power to lay and collect taxes and raise and maintain armed forces on land and sea, the Constitution vests in Congress plenary control over foreign and interstate commerce, and thus authorizes it to institute protective and discriminatory laws in favor of American interests, and to create a wide sweep for free trade throughout the whole American empire. A single clause thus reflects the strong impulse of economic forces in the towns and young manufacturing centres. In a few simple words the mercantile and manufacturing interests wrote their *Zweck im Recht*; and they paid for their victory by large concessions to the slave-owning planters of the south.

While dealing with commerce in *The Federalist* Hamilton does not neglect the subject of interstate traffic and intercourse. He shows how free trade over a wide range will be to reciprocal advantage, will give diversity to commercial enterprise, and will render stagnation less liable by offering more distant markets when local demands fall off. "The speculative trader," he concludes, "will at once perceive the force of these observations and will acknowledge that the aggregate balance of the commerce of the United States would bid fair to be much more favorable than that of the thirteen states without union or with partial unions."

4. Another great economic antagonism found its expression in the clause conferring upon Congress the power to dispose of the territories and make rules and regulations for their government and admission to the Union. In this contest, the interests of the states which held territories came prominently to the front; and the ambiguity of the language used in the Constitution on this point may be attributed to the inability of the contestants to reach precise conclusions. The leaders were willing to risk the proper man-

agement of the land problem after the new government was safely launched; and they were correct in their estimate of their future political prowess.

These are the great powers conferred on the new government: taxation, war, commercial control, and disposition of western lands. Through them public creditors may be paid in full, domestic peace maintained, advantages obtained in dealing with foreign nations, manufactures protected, and the development of the territories go forward with full swing. The remaining powers are minor and need not be examined here. What implied powers lay in the minds of the framers likewise need not be inquired into; they have long been the subject of juridical speculation.

None of the powers conferred by the Constitution on Congress permits a direct attack on property. The federal government is given no general authority to define property. It may tax, but indirect taxes must be uniform, and these are to fall upon consumers. Direct taxes may be laid, but resort to this form of taxation is rendered practically impossible, save on extraordinary occasions, by the provision that they must be apportioned according to population—so that numbers cannot transfer the burden to accumulated wealth. The slave trade may be destroyed, it is true, after the lapse of a few years; but slavery as a domestic institution is better safeguarded than before.

Even the destruction of the slave trade had an economic basis, although much was said at the time about the ethics of the clause. In the North where slavery, though widespread, was of little economic consequence, sympathy with the unfortunate negroes could readily prevail. Maryland and Virginia, already overstocked with slaves beyond the limits of land and capital, had prohibited the foreign trade in negroes, because the slave-holders, who predominated in the legislatures, were not willing to see the value of their chattels reduced to a vanishing point by excessive importations. South Carolina and Georgia, where the death rate in the rice swamps and the opening of adjoining territories made a strong demand for the increase of slave property, on the other hand, demanded an open door for slave-dealers.

South Carolina was particularly determined, and gave northern representatives to understand that if they wished to secure their commercial privileges, they must make concessions to the slave trade; And they were met half way. Ellsworth said: "As slaves multiply so fast in Virginia and Maryland that it is cheaper to raise than import them, whilst in the sickly rice swamps foreign supplies are necessary, if we go no farther than is urged, we shall be unjust towards South Carolina and Georgia. Let us not intermeddle. As population increases; poor laborers will be so plenty as to render slaves useless."

General Pinckney taunted the Virginia representatives in the Convention, some of whom were against slavery as well as importation, with disingenuous interestedness.

South Carolina and Georgia cannot do without slaves. As to Virginia she will gain by stopping the importations. Her slaves will rise in value and she has more than

she wants. It would be unequal to require South Carolina and Georgia to confederate on such unequal terms.

Restrictions Laid upon State Legislatures

Equally important to personalty as the positive powers conferred upon Congress to tax, support armies, and regulate commerce were the restrictions imposed on the states. Indeed, we have the high authority of Madison for the statement that of the forces which created the Constitution, those property interests seeking protection against omnipotent legislatures were the most active.

In a letter to Jefferson, written in October, 1787, Madison elaborates the principle of federal judicial control over state legislation, and explains the importance of this new institution in connection with the restrictions laid down in the Constitution on laws affecting private rights. "The mutability of the laws of the States," he says,

is found to be a serious evil. The injustice of them has been so frequent and so flagrant as to alarm the most steadfast friends of Republicanism. I am persuaded I do not err in saying that the evils issuing from these sources contributed more to that uneasiness which produced the Convention, and prepared the public mind for a general reform, than those which accrued to our national character and interest from the inadequacy of the Confederation to its immediate objects. A reform, therefore, which does not make provision for private rights must be materially defective.

Two small clauses embody the chief demands of personalty against agrarianism: the emission of paper money is prohibited and the states are forbidden to impair the obligation of contract. The first of these means a return to a specie basis—when coupled with the requirement that the gold and silver coin of the United States shall be the legal tender. The Shays and their paper money legions, who assaulted the vested rights of personalty by the process of legislative depreciation, are now subdued forever, and money lenders and security holders may be sure of their operations. Contracts are to be safe, and whoever engages in a financial operation, public or private, may know that state legislatures cannot destroy overnight the rules by which the game is played.

A principle of deep significance is written in these two brief sentences. The economic history of the states between the Revolution and the adoption of the Constitution is compressed in them. They appealed to every money lender, to every holder of public paper, to every man who had any personalty at stake. The intensity of the economic interests reflected in these two prohibitions can only be felt by one who has spent months in the study of American agrarianism after the Revolution. In them personalty won a significant battle in the conflict of 1787-1788.

* * *

To carry the theory of the economic interpretation of the Constitution out into its ultimate details would require a monumental commentary, such as lies completely beyond the scope of this volume. But enough has been said to show that the concept of the Constitution as a piece of abstract legislation reflecting no group interests and recognizing no economic antagonisms is entirely false. It was an economic document drawn with superb skill by men whose property interests were immediately at stake; and as such it appealed directly and unerringly to identical interests in the country at large.

* * *

At the close of this long and arid survey—partaking of the nature of catalogue—it seems worth while to bring together the important conclusions for political science which the data presented appear to warrant.

The movement for the Constitution of the United States was originated and carried through principally by four groups of personal interests which had been adversely affected under the Articles of Confederation: money, public securities, manufactures, and trade and shipping.

The first firm steps toward the formation of the Constitution were taken by a small and active group of men immediately interested through their personal possessions in the outcome of their labors.

No popular vote was taken directly or indirectly on the proposition to call the Convention which drafted the Constitution.

A large propertyless mass was, under the prevailing suffrage qualifications, excluded at the outset from participation (through representatives) in the work of framing the Constitution.

The members of the Philadelphia Convention which drafted the Constitution were, with a few exceptions, immediately, directly, and personally interested in, and derived economic advantages from, the establishment of the new system.

The Constitution was essentially an economic document based upon the concept that the fundamental private rights of property are anterior to government and morally beyond the reach of popular majorities.

The major portion of the members of the Convention are on record as recognizing the claim of property to a special and defensive position in the Constitution.

In the ratification of the Constitution, about three-fourths of the adult males failed to vote on the question, having abstained from the elections at which delegates to the state conventions were chosen, either on account of their indifference or their disfranchisement by property qualifications.

The Constitution was ratified by a vote of probably not more than one-sixth of the adult males.

It is questionable whether a majority of the voters participating in the elections for the state conventions in New York, Massachusetts, New Hampshire, Virginia, and South Carolina, actually approved the ratification of the Constitution.

The leaders who supported the Constitution in the ratifying conventions represented the same economic groups as the members of the Philadelphia Convention; and in a large number of instances they were also directly and personally interested in the outcome of their efforts.

In the ratification, it became manifest that the line of cleavage for and against the Constitution was between substantial personalty interests on the one hand and the small farming and debtor interests on the other.

The Constitution was not created by "the whole people" as the jurists have said; neither was it created by "the states" as Southern nullifiers long contended; but it was the work of a consolidated group whose interests knew no state boundaries and were truly national in their scope.